ment, the Joint Board has proposed to withdraw universal service support for multiple-line businesses. If adopted, this proposal will destroy years of economic development planning and efforts by states, counties and rural telephone companies, and send a disastrous message to information and service firms that they cannot receive comparable telecommunications services at comparable rates in rural America.

In its misguided attempt to save a few dollars of universal service support, the Joint Board erroneously equates multiple-line businesses with large corporations (Recommended Decision, para. 91). However, the facts are that most small businesses (even most one-person firms) are multiple-line businesses, and that most rural multiple-line businesses are small businesses. Small firms take service on multiple lines so that actual and potential customers can reach them or leave a message: (a) when the owner or an employee is on the telephone; (b) when someone is sending or receiving a facsimile; or (c) when someone is using an on-line service.

Whereas the cost of local telephone service may not influence the service and location decisions by Fortune 500 corporations like General Motors and Exxon, it certainly is a large and critical decision factor for the shops, restaurants, vehicle dealers, garages, grain elevators, livestock agents, veterinarians, insurance agencies and other small businesses that take multiple-line service in rural areas. Moreover, the comparative cost and quality of telephone service in particular areas is the most important location factor for the non-Fortune 500 telemarketing, customer support, mail order fulfillment and data entry firms that have relocated, or are considering relocating, in rural areas.

One Western Alliance member estimates that loss of federal universal service support for multiple-line business service would require it to increase all of its local residential and business service rates by 60 percent, or to increase its rate for local multiple-line business service by 130 percent. Another Western Alliance member would be required to increase its monthly rates for all business and residential line rates by 58 percent, or else to increase its monthly rate for multiple-line business rates by 283 percent. Rate increases of this magnitude constitute a significant hardship for existing local residents and businesses. Moreover, they destroy years of economic development efforts of rural communities by driving away, or discouraging future location or expansion by, telecommunications-intensive information and service firms. Therefore, the Commission is requested not only to reject the Joint Board's multiple-line proposal, but also to indicate its intent to do so as soon as possible in order to limit the adverse impact of the proposal itself upon ongoing rural economic development and business location decisions.

The Frozen Transitional Per-Line Support Established For Rural Telephone Companies Is Wholly Insufficient And Portends Unlawful Results

The Joint Board correctly has observed that rural telephone companies serve fewer customers relative to the large incumbent

LECs, serve more sparsely populated areas, do not benefit from economies of scale and scope as much as non-rural carriers, and cannot respond to changing operating conditions as quickly as large carriers (Recommended Decision, para. 283). However, notwithstanding its conclusion that these different conditions require rural telephone companies to be regulated differently than large carriers, it has recommended that they be subjected to a frozen transition mechanism that is insufficient and unfair, and that will halt or eliminate infrastructure expansions and upgrades in many rural areas.

Section 254(b)(5) expressly requires all federal and state support mechanisms to be sufficient to preserve and advance universal service. Moreover, Section 254(e) expressly requires the federal universal support mechanism for rural and other high cost areas to be sufficient to achieve the express purposes of Section 254 -- namely, services and rates reasonably comparable to urban areas, quality services at just, reasonable and affordable rates, and access to advanced services. 47 U.S.C. § 254(b).

The Joint Board proposes that existing federal USF, DEM weighting, and LTS benefits for rural telephone companies be frozen on the basis of historical per-line amounts during the 1998-2000 period, and that a portion of federal support continue to be based on the same frozen per-line amounts during the 2001-2003 period (Recommended Decision, para. 283). Specifically, transitional per-line USF support will be frozen on the basis of 1995 loop costs and loop counts, and transitional per-line DEM and LTS support will be frozen on the basis of 1996 DEM weighting benefits (derived primarily from switching costs), 1996 LTS benefits, and 1996 loop counts (Recommended Decision, paras. 291-93).

The Joint Board makes no attempt to consider or determine whether frozen per-line support based upon 1995 loop costs and 1996 switching costs will be sufficient to meet the operating conditions and financial requirements facing rural telephone companies during any portion of the 1998-2003 period. For example, tornados, hurricanes, severe snowstorms, earthquakes, accidents and other irregular and unpredictable conditions may significantly increase actual equipment and repair costs for some companies during the 1998-2003 period to levels far above their frozen 1995 or 1996 per-line costs. Also, as plant and central office equipment ages, per-line maintenance costs for some companies may increase substantially beyond their frozen 1995 or 1996 levels even in the absence of natural or man-made disasters.

In addition, as the Commission is well aware, depreciation rates and depreciation reserves have not kept pace with rapid changes in telecommunications technology during the past decade. Hence, the depreciation expenses incorporated into 1995 loop costs and 1996 switching costs were unreasonably low for many rural telephone companies. In addition to calculating per-line costs and support at levels lower than warranted for many companies, the Joint Board's proposed freeze will hinder or preclude the depreciation rate/reserve problem from being resolved for rural telephone companies for most or all of the 1998-2003 period.

The harsh financial consequences of this mismatch between the Joint Board's recommended transition period, and the depreciation rate/reserve problem, comprise an unconstitutional "taking." The depreciation schedules of one Western Alliance member (serving approximately 6,000 access lines) illustrate this prospect. A substantial amount of the company's facilities recently have been installed as a result of scheduled plant upgrades and, as a result, are relatively undepreciated. Moreover, the depreciation rates are low, reflecting prescribed equipment lines extending far beyond the six year transition period prescribed by the Joint Board. For instance, depreciation rates for the Cable and Wire category are 5.7 percent per year, reflecting a prescribed useful life of 17.45 years. The depreciation rate for Central Office Equipment is 9.75 percent, reflecting a 10.2 year prescribed useful life. For Central Office transmission equipment, the depreciation rate is 8.52 percent, reflecting an 11.74 year prescribed useful life.

The proposed six-year transition period is insufficient to allow the member to recover its investments (which were made in good faith and subject to regulatory oversight) without an accelerated depreciation rates or periods. In this case, the additional revenue requirement needed to match such an accelerated amortization (coinciding with the end of the transition period in 2003) is $2.6 million. However, the Joint Board's <u>Recommended Decision</u> makes no allowance for recovering revenue requirements for prudently invested, but unamortized amounts. Rather, a major portion of the member's investment in new facilities will become "stranded" once subjected to forward-looking proxy recovery systems having little to do with the actual dollar investments and dollar costs of providing telephone service. This is true even though the facilities will still be used and useful in providing such service.

The Western Alliance is aware that the Commission has previously rejected arguments that forward-looking pricing constitutes an unconstitutional "taking" in its First Report and Order, CC Docket Nos. 96-98, 95-185, FCC 96-325, released August 8, 1996, implementing interconnection rules in the wake of the Telecommunications Act of 1996. There, the Commission relied heavily on Dusquesne Light Co. v. Barasch, 488 U.S. 299 (1989), which it interpreted as sanctioning the exclusion of prudently incurred historical costs. However, the Commission's construction of the Duquesne case ignored the fact that the Court's holding was strictly in the context of capital investments that were not "used and useful in service to the public." Duquesne, 488 U.S. at 301-02. Here, the Joint Board has not found, and cannot reasonably find, that rural telephone company assets are not "used and useful" for universal service purposes. The Joint Board's failure to consider the confiscatory effect of its six year "transition" mechanism requires the rejection thereof.

The harsh revenue reductions contained in the Joint Board's proposal appear confiscatory in additional ways. For instance, rather than preserving the dollar levels of existing universal service support for at least the initial 1998-2000 period, the Joint Board's proposed transition mechanism appears immediately and significantly to slash USF/DEM/LTS support for most rural telephone companies. It appears that the Joint Board contemplates that the frozen per-line USF/DEM/LTS factors used during the transition period will be calculated on the basis of the total number of loops (including second residential lines, second residences and multiple-line businesses) at the end of 1995 or 1996 (Recommended Decision, paras. 291-93). However, if the Joint Board's proposal to exclude support for second residential lines, second residences and multiple-line businesses is adopted, these frozen per-line factors will be multiplied only by the numbers of single principal residential lines and single-line business lines to determine the dollar amount of USF/DEM/LTS support going to individual rural telephone companies during the transition period. For rural telephone companies serving significant numbers of second residential lines, second residences and multiple-line businesses, this will produce an immediate and sharp drop in transitional universal service support. For example, if a rural telephone company serving 2,500 access lines (1,875 of which are initial residential lines for primary residences, or single-line business lines) had received $750,000 in USF/DEM/LTS support during the relevant years, its frozen support factor would be $300 per line. However, if it transition support were calculated only on the basis of its 1,875 initial residential and single-line business lines, it would initially receive transitional USF/DEM/LTS support of only $562,500 -- a decrease of 25 percent from its current level.

Likewise, the Joint Board gave no reason why it needs to impose a two-year lag on the year-end loop counts used to calculate support during the transition period (Recommended Decision, paras. 291-93). Whereas the **costs** employed to calculate existing USF support have generally been subject to a two-year lag for administrative and auditing purposes, there is no similar basis for a two-year lag in the use of readily ascertainable and verifiable loop counts. The principal effect of such an unnecessary and unjustified lag will be to deprive a carrier that has expanded into previously unserved areas, or acquired exchanges from other carriers, from recovering portions of its reasonable and legitimate costs for two years.

The Joint Board's proposed freeze also simply is bad public policy. It will discourage the upgrade and expansion of rural infrastructure at the very time that such investment is necessary to ensure rural participation in the Information Age and to promote rural economic development. In addition to the serious shortfalls, decreases and lags described above, the frozen per-line factors will eliminate the incentive, and curtail the ability, of rural telephone companies to upgrade their existing plant and switching facilities, and to expand into unserved and other areas having per-line costs higher than the frozen levels. What company is going to upgrade or expand its facilities voluntarily, if it is to be denied recovery of that portion of its investment that exceeds its frozen 1995 or 1996 per-line costs, or if it is permitted to recover such investment only via large and disruptive local rate hikes? Moreover, as federal universal service support is frozen or reduced, it will become increasingly difficult for rural telephone companies to obtain financing from RUS, RTB or private sources for expansions or upgrades. These concerns are not theoretical or academic, for the Western Alliance is aware of several member companies that have already put upgrade or expansion plans "on hold" because of the concerns created by the Joint Board's proposed freeze.

Moreover, the ultimate inequity is that the Commission, other federal agencies and state PSCs continue to impose requirements for new services and upgraded facilities upon rural telephone companies. Under the Joint Board's proposal, no portion of the increased per-line costs of such requirements can be recovered from the frozen USF/DEM/LTS mechanism during the transition period. These requirements include:

1. The Commission's caller ID rules will require some rural telephone companies to upgrade their switching software to accommodate the Commission's privacy blocking and unblocking system ("*69" and "*82"). For example, carriers with Stromberg Carlson DCO switching equipment must spend approximate $20,000 per exchange for software upgrades. Carriers whose requests for waiver of the caller ID implementation timetables remain pending may have to make these investments in 1997 or thereafter.

2. During 1996 alone, the Commission has issued several orders requiring rural telephone companies to upgrade their networks in order to provide: (a) Originating Line Screening service, <u>Third Report and Order</u>, 1 CR 1115 (1996); (b) dialing parity, <u>Second Report and Order and Memorandum Opinion and Order</u> (Implementation of the Local Competition Provisions of the Telecommunications Act of 1996), CC Docket No. 96-98, FCC 96-333, released Aug. 8, 1996; and (c) number portability upon request from another carrier, <u>First Report and Order and Further Notice of Proposed Rulemaking</u> (Telephone Number Portability), CC Docket No. 95-116, FCC 96-286, released July 2, 1996.

3. RUS has required the state PSC or the telecommunications providers in each state to develop and obtain RUS approval of a State Telecommunications Modernization Plan (STMP) in order for RUS hardship loans, RUS cost-of-money loans, or RTB loans to be made available to carriers in the state after February 13, 1996. 7 C.F.R. § 1751.103(a). These plans require the upgrade of plant and switching facilities to: (a) eliminate party line service; (b) enable rural customers to obtain conference calling, video images and data at minimum bit rates; and (c) encourage and improve computer networks and information services for rural customers. 7 C.F.R. § 1751.106(a).

4. State PSCs have required rural telephone companies to upgrade the plant and equipment of exchanges acquired from large LECs such as US West, United and GTE, as a condition of approving the transfers. See e.g. Bluestem Telephone Company, 11 FCC Rcd 7130 (AAD 1996) ($1.165 million in switching and plant upgrades); Golden Belt Telephone Association, Inc., DA 96-1770, released October 25, 1996 ($1.1 million in plant upgrades).

5. The Joint Board itself has proposed that some rural telephone companies be required to upgrade existing party lines to single party service in order to qualify for universal service support (Recommended Decision, para. 47).

6. The Communications Assistance for Law Enforcement Act (CALEA) requires rural telephone companies and other carriers to invest in facilities and equipment to furnish wiretapping capabilities specified by the Federal Bureau of Investigation. With respect to equipment installed or deployed after January 1, 1995, carriers may petition the Commission for reimbursement by the Attorney General of the additional reasonable costs of making compliance with CALEA reasonably achievable. However, the CALEA rules appear to contemplate that some investments will be reimbursed only in part by the Attorney General, or denied reimbursement entirely.

Finally, not only is the frozen transition period support mechanism wholly insufficient and unfair, but also the transition period per se would be too short even if the transition mechanism had no major defects. The Joint Board did not explain why it selected a three-year period for the commencement of rural telephone company conversion to a proxy-based mechanism, or why it selected a three-year period for the completion of such conversion. Whereas the Western Alliance is opposed to proxy mechanisms in general, it finds it particularly troubling that the Joint Board is proposing that rural telephone companies begin converting to a proxy-based mechanism as of January 1, 2001, when no acceptable proxy model has yet been adopted, tested and verified for large LECs, much less for rural telephone companies. Moreover, a three-to-six year transition period is too short to resolve the depreciation reserve problem discussed above, and to permit rural telephone companies to recover the plant and switching investments that they have been required to make by their state PSCs and the Commission.

The Proposed Future Proxy/Benchmark Mechanism Is Vague, Unpredictable And Insufficient

The Western Alliance opposes the Joint Board's proposed future replacement of existing universal service mechanisms based on actual costs, with a yet-to-be-determined proxy/benchmark mechanism based on hypothetical and unverifiable "forward-looking" costs. Not only does the Joint Board admit that there is no acceptable proxy model in existence at this time, but also proxy models and "forward-looking" costs are inherently too inaccurate, uncertain, volatile and insufficient to protect (much less enhance) universal service in rural areas.

The Joint Board refused to recommend any of the proxy models submitted in this docket so far -- the Benchmark Costing Model (BCM), the Benchmark Costing Model Version 2 (BCM2), the Cost Proxy Model (CPM), and the Hatfield Models (Hatfield) -- for use in the determination of universal service support levels (Recommended Decision, para. 268). It stated that none of these models are "sufficiently developed" to allow it to recommend a specific model at this time (Id.). However, it nonetheless recommended that a "properly crafted" proxy model be developed prior to May 8, 1997 to calculate the forward-looking economic costs of serving (and to function as the cost input in determining the level of support a carrier may need to serve) specific geographic areas (Id.).

The critical fact is that there is no acceptable, sufficiently developed, tested, or verifiably accurate and sufficient proxy model in existence at this time. The models previously submitted by or on behalf of large carriers such as AT&T, MCI, Sprint, U.S. West and PacTel are subject to substantial questions and concerns regarding the accuracy and reasonableness of their assumptions, estimates and data. For example, the Joint Board itself points out numerous problems with the BCM2 and Hatfield models, including the lack of sufficiently accurate information concerning: (a) the actual location of households and the placement of facilities to reach those households via technically feasible routes; (b) extreme geographic or climactic conditions; (c) fiber-copper cross-over points; (d) the use of host and remote switches in sparsely populated areas; and (e) depreciation rates (Recommended Decision, App. F).

In City of Brookings Mun. Tel. Co. v. FCC, 822 F.2d 1153 (D.C. Cir. 1987), the court found that the Commission had failed to engage in reasoned decisionmaking when it approved a modified system of telephone company reimbursement proposed by the National Exchange Carrier Association (NECA), without properly considering numerous objections by opposing parties to NECA's data and methodology. The court voided the Commission's action approving the NECA system because "the FCC acted irrationally in glossing over gaping holes, especially in light of errors and anomalies evident in what NECA did submit." Id. at 1168. The existing proxy models are subject to the same legal and methodological defects.

Put simply, there is presently no adequate proxy model available for consideration by the Commission, or on which the Western Alliance and other interested parties may comment. It is improbable that an adequate model can be developed during the Commission's scheduled January 13 and 14, 1997 workshops or at any other time before May 7, 1997. Moreover, it is impossible for such an eleventh-hour model to be properly reviewed, tested, and validated by interested parties during the truncated period available.

Even as a general proposition, proxy models do not and cannot provide an accurate and sufficient basis for estimating the costs and associated universal service support for individual carriers, particularly rural telephone companies. The Joint Board recognized that rural carriers should move slowly to a proxy model because their small customer bases, sparsely populated service areas, and inability to realize economies of scale and scope may result in large and unsettling changes in the amount of universal service support they receive (Recommended Decision, para. 283). It provided no reasoned explanation why rural telephone companies should be forced to rely upon untested, inexact and unreliable proxy models for the calculation of their critical universal service support, when readily verifiable actual costs are available. The Joint Board's conclusion that "a properly designed cost proxy model would allow carriers serving high cost areas to charge affordable rates" (Recommended Decision, para. 284) is pure supposition without any basis in fact or experience.

First, proxy models are neither designed nor intended nor capable of accurately estimating the dollar costs of serving limited and sparsely populated areas like those served by rural telephone companies. Proxy models are simply mathematical algorithms that were initially designed to predict the general telephone cost characteristics -- for example, "low cost," "low-medium cost," "high-medium cost," or "high cost -- of areas with certain geographic and demographic characteristics. Whereas they have been used or misused to predict costs in certain areas, they are accurate only in a statistical sense when used in conjunction with extensive service areas containing large numbers of Census Block Groups (CBGs) or similar data points. They are not accurate, and have never been intended to be accurate, with respect to single CBGs or small numbers thereof. Whereas errors and outliers balance out when estimating costs for a large number of CBGs, the proxy-estimated costs of a handful of CBGs may be several magnitudes above or below the actual costs of serving the area. Hence, rather than providing a predictable and sufficient mechanism for calculating support for rural telephone companies, proxy models are likely to produce numerous "winners" and "losers" among individual small carriers, and to do so in a volatile manner from year to year. As an analogy, whereas one would expect the result of 500 fair coin tosses to approximate 50 percent "heads" and 50 percent "tails," very few people would be willing to bet the welfare of their family, business or community on the outcome of a single, specified coin toss. Similarly, a sufficient universal service support mechanism should allow ETCs to recover their actual reasonable and prudent costs, and not force them periodically to risk their financial and operational viability on the capricious individual outcomes of a statistical proxy formula.

Second, proxy models based upon "forward-looking" costs and "least-cost, most efficient and reasonable technology" (Recommended Decision, para. 277) will produce further uncertainty and inaccuracy. The Joint Board declined to mandate the Total Service Long Run Incremental Cost (TSLRIC) approach for schools and libraries because the calculation of such "forward-looking" costs would be too time-consuming for them, and because it would be too difficult for them to evaluate and agree upon specific TELRIC-based prices for the supported services (Recommended Decision, para. 545). These considerations are equally true for rural telephone companies, yet the Joint Board failed to explain why it treated them differently than schools and libraries.

Moreover, the essence of "forward-looking" long run costs is that they are volatile, subjective and unverifiable. First, the assumption of a long run period of sufficient duration to render all costs variable and avoidable, means that costs cannot be verified, at least not until long after it matters. Second, the assumption of "least-cost, most efficient and reasonable technology" means that the costs that a carrier can recover for its actual plant investment will drop precipitously each time a vendor rolls out new equipment or technology, even though the carrier must continue to pay off the loans and other liabilities incurred for its existing plant on the basis of the actual dollars that it borrowed and invested. These "forward-looking" assumptions not only prevent carriers from recovering substantial portions of their infrastructure investment, but also render it irrational for them to make further investments in the future.

The Joint Board and the Commission do not need proxy models to ensure that rural telephone companies invest prudently and operate efficiently. Whereas one or two large interexchange carriers may have spread rumors of "gold-plated" rural telephone facilities for their own selfish purposes, these are only myths. The typical Western Alliance member is a small business, and lacks the massive cash flows and ready access to private capital markets that would allow it to invest imprudently or enroll its owners and managers in the ranks of the rich and famous. Rather, Western Alliance members and other rural telephone companies must rely primarily upon the RUS and RTB for the loans and guarantees necessary to finance the major portion of their plant and switch investments, and must comply with the eligibility, coverage, service and feasibility regulations of those agencies before receiving such financing. Among other things, prospective rural telephone company borrowers must prove to the RUS during a lengthy and detailed application process that: (a) the requested loan will be repaid on time; (b) the telephone market projections upon which the loan is based are reasonable; (c) the project is economically feasible on the basis of projected revenues and expenses, net income, maximum debt serv-ice, and rate of return on investment; (d) appropriate financial and managerial controls are in place; and (e) adequate telephone service will be made available to the widest practicable number of rural users during the life of the loan. 7 C.F.R. § 1735.51. These RUS and RTB procedures are more than sufficient to ensure that rural telephone companies invest prudently and operate efficiently.

Finally, whereas the Joint Board correctly finds that proxy models are inappropriate for rural carriers in Alaska and the insular areas (Recommended Decision, para. 298), it fails to recognize that the same is true for rural carriers LECs in the continental United States. For example, rural carriers in Montana, Wyoming and other mountainous northwestern areas must deal with remote communities, snow and ice throughout much of the year, and limited time periods for construction and maintenance in a manner virtually indistinguishable from rural Alaskan carriers.

Therefore, the Western Alliance proposes that the Commission's revised universal service support mechanism be based on actual and verifiable historical costs, and not upon nonexistent, hypothetical and unverifiable proxy models. This will ensure that rural telephone companies and other small carriers will be able to recover their actual dollar investment costs and repay their actual dollar loans, and that they will have effective incentives to continue investing in telecommunications infrastructure and promoting rural economic development.

The Proposed Contribution Base Renders Support Mechanism Insufficient And Exceeds Commission's Interstate Jurisdiction

During its consideration and enactment of Section 254, Congress gave no indication that rural recipients of universal service support would or should be required to contribute to the support mechanism. Such contributions, if required, would reduce the **net** support received by rural telephone companies from the mechanism, and would render such net support insufficient.

Section 254(b)(5) requires all federal and state universal service support mechanisms to be sufficient to preserve and advance universal service. In addition, 254(e) expressly requires the support provided to rural telephone companies and other ETCs serving high cost areas to be sufficient to achieve the purposes of Section 254.

Let us assume that the Commission determines that the "sufficient" level of federal universal service support to be provided to a particular rural telephone company is $500,000 for 1999. If the Commission requires the same rural carrier to contribute $75,000 to its federal universal service mechanisms during 1999, the carrier will receive **net** support of only $425,000 for 1999. This amount will not constitute "sufficient" support under the Commission's own determination.

Whereas Section 254(h) expressly allows carriers furnishing discounted services to schools, libraries and rural health care providers to take offsets against their contribution obligations, no such provision is included or implied in Section 254(e) with respect to rural carriers. Therefore, it is clear that Congress intended to preserve and continue the existing arrangement wherein rural telephone companies and others receiving support for high cost areas do not have their net support reduced by requirements to contribute to the support mechanisms. As Senator Dorgan declared during Senate consideration of the 1996 Act, reduction or elimination of the level of universal service support would be flagrantly inconsistent with this Nation's 60-plus year commitment to universal service. 141 Cong. Rec. S. 4210-12 (March 21, 1995).

Violation of the "sufficiency" requirement would be exacerbated if the Commission were to require rural telephone companies to contribute to the federal support mechanism on basis of their interstate **and intrastate** revenues. If the intrastate local service revenues and intrastate access revenues of rural telephone companies were taxed to support the federal mechanism, their net federal universal service support would decrease substantially.

Moreover, the Commission lacks jurisdiction over intrastate revenues. Nothing in Section 254 expressly or implicitly modifies the long-standing limitation by Section 2(b)(1) of the Act of

Commission jurisdiction over "charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by radio or wire of any carrier." 47 U.S.C. § 152(b)(1). In fact, Section 254((f) expressly preserves the interstate/intrastate distinction by authorizing the states to develop their own intrastate universal service mechanisms so long as they "do not rely on or burden Federal universal service support mechanisms." 47 U.S.C. § 254(f).

Put simply, neither the Commission nor interstate carriers nor the courts would be likely to allow state PSCs to assess contributions for intrastate universal service support mechanisms upon interstate services and revenues. In the same manner, the Commission may not, and should not, burden existing and prospective state mechanisms by assessing federal contributions against intrastate services and revenues.

NECA Should Not Be Replaced
<u>As Universal Service Administrator</u>

Since its creation, NECA has done an absolutely excellent job of fairly and efficiently administering the tariffs, pools, and funds entrusted to it by the Commission and the industry. It has developed a highly skilled and experienced professional staff that is fully capable of administering existing and revised universal service support and collection mechanisms in a neutral, impartial, effective and efficient manner.

The Joint Board recognizes that NECA has successfully administered the existing high cost assistance fund and the

Telecommunications Relay Service fund, and there is no evidence of impropriety regarding NECA's management of these funds (Recommended Decision, para. 832). However, it appears to give some credence to questions raised by MCI and others regarding "NECA's ability to appear as a neutral arbitrator among contributing carriers" (Id.), and recommends against appointing NECA as the permanent administrator at this time. Rather, it proposes that a universal service advisory board appoint a neutral, third-party administrator through competitive bidding within six months (Recommended Decision, para. 831).

The Western Alliance does not understand the concerns of MCI and others regarding NECA's neutrality and impartiality. Inside the telephone industry, NECA is often characterized as "more FCC than the FCC," and is noted for refusing to allow issuing carriers to construe provisions of its access tariffs to their benefit against interexchange carriers, even when there is no Commission order expressly prohibiting such interpretations. However, even though NECA can be aggravating at times, the telephone company personnel and attorneys who deal with it have the utmost respect for the integrity and professionalism of its staff.

However, the real issue here is NECA's "going concern" value -- that is, its existing and experienced staff, its institutional memory, and its proven capability to administer, collect and disburse the proceeds of substantial industry funds in a timely and efficient manner. At this time of massive and wholesale changes in the telecommunications industry, it makes no sense to throw away

NECA's experience and proven competence and to hand over the critical, revised federal universal service support mechanisms to an untried and untested administrator. Those in the business for several years remember the early days of the Copyright Royalty Tribunal, and do not want to revisit the missteps and delays which characterized that agency's initial collection and distribution of cable copyright fees. Where, as here, rural telephone companies rely upon universal service support for recovery of critical portions of their costs, competent administration is necessary in order to avoid delays and errors that would create serious cash flow problems for recipients.

In this regard, the Western Alliance vigorously objects to the proposed selection of the ultimate administrator via competitive bidding. The selection of a qualified universal service fund administrator is extremely important to the industry, and should be made on the basis of experience and proven competence rather than upon the lowest bid price. Whereas the Commission may select its copying contractor on the basis of the lowest bid, it certainly would not select the airline carrier for the Commissioners and its senior staff solely on a lowest price basis. It should treat the selection of its universal service fund administrator with the same concern for quality, proven competence and reliability.

Separate High Cost, Low-Income
And School/Library/Health Care Funds

The Western Alliance opposes the Joint Board's recommendation of a single fund for all universal service support programs

(Recommended Decision, para. 612). The Commission should not place the universal service support mechanisms for high costs areas, low-income customers, and schools/libraries/health care providers in the same fund, but rather should establish separate funds for the three programs. The three programs target different areas or groups, have different eligibility criteria, and entail different support mechanisms. Therefore, they should be administered via separate funds.

For example, only state PSC-designated ETCs are eligible to receive high cost area support, 47 U.S.C. §§ 214(e) and 254(e), whereas all telecommunications carriers must respond to bona fide requests for service under the schools/libraries/health care providers mechanisms. 47 U.S.C. § 254(h)(1). Likewise, high cost support serves to recover a certain portion of the above-average costs of providing, maintaining and upgrading facilities used to furnish designated core services in rural areas, 47 U.S.C. § 254(e), whereas the school/library/health care provider program must set appropriate and necessary discounts for significantly different menus of services. Again, the school and library program sets the prices against which discounts are applied via requests for proposals and competitive bidding, and permits carryforwards of support not distributed during one year to succeeding years -- features which are not included in other support mechanisms. Finally, the Lifeline program for low-income customers may entail matching state grants, and (if so) will require coordination with the states.

Overall, these and other differences in the three programs make it very difficult and confusing to administer them via the same common accounting and recordkeeping system. Therefore, whereas there is no problem in having the same administrator or agency handle all three programs, they should be administered as separate funds via different employees under separate accounting systems.

Conclusion

The Western Alliance urges the Commission to join with the Congress in recognizing that "rural is different" and that Section 254 constitutes an essential safety net for rural areas and others likely to be trampled by the competitive forces unleashed by the rest of the 1996 Act. It specifically asks the Commission to: (1) reject the extraneous and inconsistent "competitively neutral" principle; (2) furnish universal service support for all rural residential and business lines; (3) calculate universal service support for rural telephone companies on the basis of actual and verifiable investment and expenses, and not on the basis of some hypothetical, future proxy/benchmark mechanism; (4) ensure that any transition to a revised universal service support system does not precipitously slash the existing support of rural telephone companies and/or discourage infrastructure investment in rural America; (5) refrain from imposing the net support received by rural telephone companies by not requiring them to contribute to the proposed universal service support mechanism on the basis of their interstate access revenues (and particularly not their intrastate local service revenues); (6) give proper recognition to the proven capability, integrity and reliability of NECA as an administrator of universal service and other funds; and (7) establish separate high-cost, low-income, and school/library/ health care provider support funds.

Respectfully submitted,
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